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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.

EXAMINER	
ART UNIT	PAPER NUMBER
	3

DATE MAILED:

RONALD J KRANDORF
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This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☐ Responsive to communication(s) filed on _____.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☑ Claim(s) 1-15 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☑ Claim(s) 1-15 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☑ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of Reference Cited, PTO-892

☑ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☑ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

-- SEE OFFICE ACTION ON THE FOLLOWING PAGES --

★ U.S. GPO 1996-409-290/40029

EXAMINER'S AMENDMENT

Claim Rejections - 35 USC § 112

1. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 5, "light" should be changed to --a light pulse-- in order to avoid an inferential inclusion of "pulse" with "light"; and,
line 6, the "surface" lacks antecedent basis.

In claim 2, the claim is improperly dependent on claim 2. For examination purposes, this claim has been treated as dependent upon claim 1.

In claim 14, it is unclear if the blood vessels are psoriatic plaque or if the terminology should be replaced with language that is consistent with the specification in that the blood vessels underlie psoriatic plaque. Therefore, the claim is vague and indefinite.

In claim 15, line 5, "light" should be changed to --a light pulse-- in order to avoid an inferential inclusion of "pulse" with "light"; and,
line 6, the "surface" lacks antecedent basis.

Double Patenting

The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claims 1, 2-4, 7, and 14 are rejected under the judicially created doctrine of double patenting over claims 1 and 3-5 of U. S. Patent No. 5,527,350 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: The subject matter of instant claim 1 is fully disclosed in the patent, because the psoriasis treatment disclosed therein is a particular example of a method meeting instant claim 1. Furthermore, the limitations found in instant claims 2, 3, 4, 7, and 14 are fully disclosed and covered in the patent by claims 3, 4, 5, 1, and 1 respectively.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

2. Claims 2-4, 8-10, 14, and 15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3-5 of U.S. Patent

No. 5,527,350. Although the conflicting claims are not identical, they are not patentably distinct from each other because: (1)In instant claims 2-4 and 14, the claims are a mere broadening in scope of the patent claims and thus do not patentably distinguish the patented claims. (2)In instant claims 8 and 9, the examiner takes official notice that gating in order to provide pulses of laser light is well known in the art. Therefore, it would have been obvious to one skilled in the art to modify the patented invention with a means for gating in order to deliver pulses of laser light. (3)Psoriasis can be found on the legs. Therefore, to apply the method of claim 1 of the patent to leg veins would have been obvious to one skilled in the art as an additional treatment site.

Conclusion

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent No. 5,558,667 to Yarborough et al., US Patent No. 5,344,418 to Ghaffari, and US Patent No. 4,930,504 to Diamantopoulos et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryan Yarnell whose telephone number is (703) 308-3173. The examiner can normally be reached on Monday through Thursday from 7:30 am to 5 pm. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer Bahr, can be reached on (703) 308-0858. The fax phone number for this Group is (703) 308-3139.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0858.

Jennifer Bahr

JENNIFER BAHR
PRIMARY EXAMINER
GROUP 3300

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Mar. 24, 1997